



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 4, 1998

Mr. Tracy A. Pounders
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR98-0339

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112183.

The City of Dallas (the "city") received a request for a variety of information related to the proposed new sports arena "going back to June 7, 1995," including Letters of Intent between the city and the two sports teams, all documents pertaining to the last four years of negotiations between the city and various parties, and any and all sports-related documents currently in the possession of various city departments. You state that the requested information generated through July 8, 1997 has been ruled on in previous opinions from this office, including OR96-0599, OR96-0723, OR96-1826, OR97-0145, OR97-1874 and OR97-2235. The city should rely on these ruling to withhold information covered by those requests and the current one. You have, however, submitted representative samples of the information responsive to the pending request which was generated after July 8, 1997, and assert that portions of the requested information are excepted from required public disclosure based on Government Code sections 552.105(1), 552.107(1), 552.111. We will therefore address your newly raised arguments and review the submitted information.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.105 excepts from disclosure information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 (1990) at 2. For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 (1982) at 3 (quoting Open Records Decision No. 222 (1979)).

When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to the acquisition of property, the attorney general in issuing a ruling under section 552.306 will accept that determination unless the records or other information show the contrary as a matter of law. Open Records Decision No. 564 (1990). Upon review of the city's arguments and the information contained in Exhibits D and E, we agree that release of certain information in these exhibits would damage the city's negotiating position with respect to the purchase of the property. Accordingly, the information we have marked in Exhibits D and E may be withheld from required public disclosure under section 552.105 of the Government Code.

You also raise section 552.107(1) to except from disclosure the information contained in Exhibit F. Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). Section 552.107(1) does not

protect purely factual information, including the factual recounting of events or the documentation of calls made, meetings attended, and memos sent, or information which reports communications made with a third party (conversations between attorney and opposing counsel). Open Records Decision No. 574 (1990) at 5. We agree that section 552.107(1) applies to a portion of the information contained in Exhibit F. We have marked this information for your convenience. The remaining information in Exhibit F must be released to the requestor, except as noted in our discussion of section 552.111, *infra*.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Where a document is a genuine preliminary draft that has been released or is intended for release in final form, the draft necessarily represents the advice, opinion, and recommendation of the draftee; release would reveal something of the deliberative process by indicating where additions and deletions were made. Therefore, the draft itself, including comments, underlining, deletions, and proofreading marks are excepted by section 552.111, but not purely factual matters that are severable. However, when such factual matter is contained in the released final product, there is no need to release it from the draft. Open Records Decision No. 559 (1990).

Upon review of the information contained in Exhibits C and G, we conclude that it consists of draft documents related to the policymaking processes of the city, and therefore this information may be withheld from disclosure under section 552.111.² While some of the documents contained in Exhibit E and F pertain to the policymaking functions of the city, some of the information contained in these documents is purely factual, or otherwise does not consist of advice, opinion or recommendation. We have marked those portions of the documents in Exhibits E and F that may be withheld from required public disclosure under section 552.111. Except as otherwise noted in this ruling, the remaining information in these exhibit must be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

²As we resolve your request for information contained in Exhibit C under section 552.111, we need not address your argument against disclosure of this information under section 552.105.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112183

Enclosures: Marked documents

cc: Ms. Laura Miller
The Dallas Observer
P.O. Box 190289
Dallas, Texas 75219
(w/o enclosures)